

To: MMS Renewable Energy and Alternate Use Programmatic EIS Scoping

Date: August 21, 2006

Re: Long Island Offshore Wind Park (LIOWP) Project ID: PLN-HQ-0001
Scoping comments for EIS

My name is Tom Vanderberg, a member of the Save Jones Beach Ad Hoc Committee, Inc. (SJB), and Chair of the legal committee of that organization. SJB is a non-profit organization incorporated in New York State, formed in the summer of 2005 by a group of Long Islanders concerned about the proposed wind farm off Jones Beach.

These written comments are in addition to the public comments I submitted verbally at the scoping hearing conducted in Massapequa, NY on July 11, 2006.

1. Aesthetics

A. In scoping the LIOWP EIS, MMS should apply a presumption that public parks and registered historic places are inappropriate sites for a wind park

Congress, with the passing of the National Environmental Policy Act, identified critical areas of concern when reviewing projects, including the preservation of aesthetically and culturally important aspects of our national heritage. See NEPA § 101(b).

Because the LIOWP project is proposed to be sited directly in front of Jones Beach State Park, Robert Moses State Park, and the portion of the Ocean State Parkway (also known as the Ocean Causeway) running between these two parks, the impacts that this project will have upon the aesthetics, the view shed, and related aspects relevant to the public enjoyment of these places are of far greater significance than usual.

Jones Beach and the Ocean Causeway are included in the National Register of Historic Places (listed 4/28/2005).

In addition to these two state parks and the Ocean Causeway, the LIOWP site is also directly adjacent to multiple municipally-owned public beaches, including Tobay Beach (Town of Oyster Bay), and three Town of Babylon beaches: Gilgo Beach, Cedar Beach, and Overlook Beach.

Public parklands are different from non-public lands because they are held in the public trust. This is a sacred trust. As such, there must be a presumption against allowing any aesthetic impact upon municipal, state and national parks that have been set aside for public enjoyment and to be held in trust for future generations.

It is the nature of ocean front parks and beaches that the viewshed is paramount – it is the primary aspect of enjoyment, and essential to the very essence and character of these parks. Without question, the industrialization of the viewshed of the abovementioned parks and causeway by the LIOWP will significantly alter the essential character of those protected places. The Ocean State Parkway, in particular, is not listed in the National Register of Historic places because of the quality of its pavement; it is there because of the quality of the view it affords.

No part of the public's enjoyment and heritage regarding the public parks and beaches mentioned above should be forfeited in favor of the LIOWP project absent critical and compelling reasons, and the exhaustion of all other options and alternatives.

Therefore, the LIOWP EIS should include a presumption that the waters within sight of Jones Beach State Park, the Ocean Causeway, and Robert Moses State Park are a per se inappropriate site, and MMS should use the highest standards possible in order to prevent adverse impacts to the aesthetics and viewshed of these parks and historic roadway.

B. Alternative sites or technologies should be considered from the perspective that preserving the aesthetic character of the state parks and historic places affected by the LIOWP proposed site takes precedence over economic benefits accruing to the applicants.

Because the lands impacted by the LIOWP include public state parks and historic places, a higher value must be placed on preserving the aesthetic character of these lands than would be applied to non-public lands and lands that are not deemed historically or culturally significant.

The array of wind turbines proposed in the LIOWP will dominate the horizon in front of the aforementioned parks and historic roadway. There is no way to ameliorate or minimize the aesthetic impact of this array while keeping the wind turbines in the proposed locations.

Necessarily therefore, MMS should require that alternative, benign sites be identified and exhaustively examined.

Obviously, the closer to shore a project is allowed to be sited, the greater the impact on aesthetics. Where public lands are affected, the cost of moving the project further out to a benign area, and any resulting consequences to the profit margin or convenience of the project owner, should be given little weight against the mandate to preserve and protect areas held in the public trust.

In order to protect the view shed of these public parks and historic places, and as part of the process of considering alternative sites, MMS should give a close look at wind technologies not only currently available, but also in the development stage. New technology may allow wind turbines to be placed in deeper waters and further out to sea.

Such technology is now being developed by the General Electric Corporation under a recent contract with the U.S. Department of Energy. A prototype of a 5-7MW offshore wind turbine, that can be located in deep water 20 miles or more offshore, is planned to be developed before 2010. Delaying the LIOWP project for a few years in order to take advantage of this new technology is well worth the benefit of reducing, if not eliminating, adverse visual impacts.

As part of its scoping process, MMS should weigh the benefits of waiting 5 -10 years for better technology against the cost of being stuck with inefficient, high-impact technology for 40 years or more.

B. MMS should make its own independent conclusions as to the extent of potential visual impacts, and not rely on the applicants claims

(i) Public acceptance of turbines. Proponents of this project have made claims in the public record that the wind turbines will be attractive to tourists and the general public, and seen as enhancing the view shed. MMS should totally dismiss these claims, as they are unsubstantiated by any factual data other than selected anecdotes, and are nothing more than biased personal conjecture.

(ii) Applicants' descriptions of visual impacts. MMS should not accept at face value the grossly minimized descriptions of aesthetic impacts contained in the applicant's supporting documents. For example, in subsec. 3 of sec. B of the LIOWP application it is stated under Policy Number 23: "The only impact to the viewshed ...would be during the operational phase of the Project when the WTGs and ESP would occasionally be visible... During peak summer use times, summer haze will often obscure the WTG's and ESP." With a height equal to a forty-story building and a blade circumference of 364 feet, the WTGs (turbines) will occupy the same visual space as the United Nations building in New York City. Sited a scant 3.6 miles offshore, it is ludicrous to claim they will be only "occasionally visible." Likewise, the applicant's statement under Policy Numbers 24, 25, regarding the Ocean State Parkway (acknowledged therein to be a scenic highway listed on the National and State Register of Historic Places), that once completed, "the only impact to the scenic quality from this highway would be the WTG array that may potentially be visible from portions of this road." In fact, the entire stretch of this roadway from Jones Beach State Park to its terminus at Robert Moses and Captree State Parks runs parallel to the entire northern boundary of the proposed site, and will most certainly, not merely potentially, be visually impacted by these huge machines. During its scoping activities MMS should visit all areas that may be visually impacted and render an independent judgment as to the extent of the impacts. MMS should also obtain from the National Weather Service independent data as to the extent and frequency of haze conditions on the south shore of Long Island in order to determine to what extent and how often these huge machines are likely to be obscured. Once a more accurate, impartial, and substantiated assessment of the actual visual impacts are developed, MMS would then need to overlay that assessment onto an acceptable standard for public parks and historical places. While I cannot offer a methodology for making such a determination, as stated above the standard must be quite high, in order to

overcome the presumption that the aesthetic quality of such protected places in the public trust must be preserved.

(iii) Photo simulations. In view of the applicant's constant minimization of visual impacts throughout its application, MMS should not accept as accurate the applicant's own photo simulations of vistas contained in the permit forms and attachments (subsec 1.3 of sec B of the LIOWP application), but rather should obtain its own photo simulations from an impartial source.

(iv) ACHP review. As stated in 36 CFR § 800.1, section 106 of the National Historic Preservation Act requires Federal Agencies to take into account the effects of their undertakings on historic properties and to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings.

As part of the scoping for this EIS, the MMS should actively engage the ACHP to investigate the particulars of this project and invite the Council to submit comments, rather than just passively await such submission. It is vital that MMS has the benefit of the Council's expertise and guidance in ascertaining the impact of this project on these historically and culturally significant places.

2. Avian studies

MMS must obtain site-specific avian studies of potential harm to birds and other flying creatures. The LIOWP applicants propose to use past studies done elsewhere. MMS should not rely on studies done at other places, such as Nantucket or Virginia. That is bad science. The LIOWP site runs perpendicular, not parallel to migratory patterns, as opposed to these other sites. Different species with different behavior patterns are involved. Because of these and other differences known and unknown, data from those other studies at other sites in prior years cannot be extrapolated and applied to the LIOWP site in lieu of current site-specific studies.

Because endangered species inhabit the proposed site, such as the Piping Plover and Least Tern, the higher standards must be applied to study potential impacts on these species. These standards should require barge-platform radar studies over an adequate period of time – usually defined as 3 to 5 year period.

The applicants do not want to accept the delay such studies would impose, but they cannot escape what the law requires for the protection of endangered species. Projects much larger than the LIOWP have been scuttled because of adverse impacts on endangered species; MMS should at the minimum require as part of its scoping that the best information be obtained regarding avian impacts. The mandates of the Endangered Species Act should not be over-ridden by an administrative decision to “fast track” this application, or by the commercial interests of the applicant.

3. Onshore facilities

It is difficult to ascertain from the LIOWP application where exactly the applicants plan to base their land-based operations. In section C-16.1 (p. 82) of the application it is mentioned that sites in the Babylon or Bayshore areas are being considered. However, subsecs 1.0 and 3.0 of sec B indicate that an Operations Center with storage and parking areas is intended to be sited at the Robert Moses State Park Boat Basin.

As I stated at the public scoping meeting in Massapequa on 7/11/06, the applicant's proposal to site onshore maintenance and storage facilities in Robert Moses or Captree State Park is prohibited by New York State Law absent specific authorization by an act of the New York State Legislature. See *Friends of Van Cortlandt Park, et al, v. City of New York et al*, 2001 N.Y. Int. 3, where the NY Court of Appeals ruled that any commercial use of a state park, even if for a public purpose, either for a period of years or permanently, requires the direct and specific approval of the State Legislature, plainly conferred.

Since there is no indication that such legislative approval has been sought, MMS should require full and complete alternative site analysis for onshore facilities. The Babylon or Bayshore areas, if these are the alternatives, are heavily populated waterfront communities, so the exact specification of the shore based facilities as to size, equipment, etc., must be fully and completely disclosed so the impacts can be completely assessed.

4. Cost-benefit analysis

Obviously, every project creates some environmental impact, and just as obviously, every EIS involves weighing the trade-offs between the benefits the project will produce against the costs of the impacts on human and natural environments.

MMS may believe it is not charged with determining if the LIOWP is needed to meet Long Island's power needs or state-mandated renewable energy source requirements. Nevertheless, MMS cannot avoid its obligation to measure and weigh the projects benefits against the costs of the impacts, especially on the public parks adjacent to the site.

In measuring benefits, MMS should not accept at face value the claim that the wind park will generate 140 MW of electricity and power 44,000 homes. This claim is based on rated capacity of turbines that have not even been designated yet. In any event, nowhere in the world has any wind park consistently produced anywhere near its rated capacity. The common output is around 20% of rated capacity. MMS should scope what the reasonable expected output will be on average over the life span of the project, after applying a study of average wind speeds at the height of the blades over several years. The benefit of this output must then be weighed against the impacts, particularly the aesthetic impacts, placed upon the affected public parks and historic sites.

Proponents suggest that MMS should consider the cost of not doing the project with regards to global warming and reliance upon foreign oil. This will lead to unsupportable

speculation. This project must stand or fall on its own specific merits. The perceived benefits should be limited to the amount of electricity it will produce.

Thank you for considering these comments.

Yours truly,

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